

# TEXAS BOARD OF ARCHITECTURAL EXAMINERS

## Minutes of January 24, 2011 Board Meeting

William P. Hobby Jr. Building, 333 Guadalupe Street

Tower I, Conference Room 225

Austin, TX 78701

9:00 a.m. until completion of business

### Preliminary Matters

#### A. Call to Order

Chair Alfred Vidaurri called the meeting of the Texas Board of Architectural Examiners to order at 9:04 a.m.

#### B. Roll Call

Secretary/Treasurer, James S. Walker II, called the roll. A quorum was present.

#### Present

Alfred Vidaurri, Jr.	Chair
Lew Vassberg	Vice-Chair
James S. Walker II	Secretary/Treasurer
Charles H. (Chuck) Anastos	Member
Chase Bearden	Member
Bert Mijares, Jr.	Member
Brandon Pinson	Member
Diane Steinbrueck	Member

#### Late

Rosemary Gammon	Member
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#### TBAE Staff Present

Cathy L. Hendricks	Executive Director
Scott Gibson	General Counsel
Glenda Best	Executive Administration Manager
Penny Black	Accounting Staff
Jackie Blackmore	Registration Staff
Christine Brister	Staff Services & Human Resources Officer
Katherine Crain	Legal Assistant
Steve Franz	Investigator
Glenn Garry	Communications Manager
Mary Helmcamp	Director of Registration
Julio Martinez	Network Specialist
Michael Shirk	Managing Litigator
Jack Stamps	Managing Investigator

#### E. Recognition of Guests

Guests were as follows: Anne McGinnis, Texas Landscape Architect and Texas Chapter of American Society of Landscape Architects, Ted Ross, Counsel to the Board from the Attorney General's Office, Donna Vining, Texas Association for Interior Design.

#### F. Chair's Opening Remarks

The Chair thanked everyone including Board members and the audience for attending the Board meeting. He noted that this is the first meeting of the New Year.

The year ushers in lots of new events and actions: the Legislature convenes this year, he felt optimistic there would be a resolution to the architect/engineer overlap issue, there will be new members on the Board this year, and indications are that the economy will continue to recover over the year. The start of a New Year is a good time to recommit to housekeeping resolutions for the Board: arrive on time, do not interrupt a member who has the floor, and always remember everything said in a meeting is recorded even if it is under your breath. Please remember to obtain the floor before speaking and follow the rules of procedure for orderly and efficient meetings.

**G. Public Comment**

The Chair recognized one person who registered for public comment. Jeri Morey, an architect from Corpus Christi, Texas, addressed two issues from comments in the draft minutes. First, the draft minutes include a statement that under the BIM model, architects play a different role than in the past and cannot be held accountable for errors and omissions in projects because under the BIM process, designs are developed collaboratively with clients, other design professionals, and contractors. Ms. Morey disagreed with that statement and noted architects should remain responsible for safety on all parts of a project. If there is an agreement by which one architect assumes responsibility for work performed in collaboration with another, the agreement should be shared with the Board. Otherwise, both architects should be held equally accountable. The second issue had to do with the discussion of reporting architectural liability to the Board, as it appeared in the draft minutes. Ms. Morey stated she had reviewed several reported decisions from the appellate courts. In those cases, architects frequently appear to be surprised by the opinions issued by architectural experts. Ms. Morey proposed that the Board should obtain copies of the certificates of merits issued by experts in litigation against architects. Based upon a review of those expert opinions, the Board could establish a standard of care for architects. Once the standard is established, architects will no longer be surprised by standards applied to them by experts.

**2. Presentation of Retirement Certificate of Recognition for Lucy Sweeney**

The Chair read a proclamation for Lucy Sweeney into the record. Ms. Sweeney worked at TBAE from January 29, 1997 through November 2010.

**3. Approval of the October 24-25, 2010, Board Meeting Minutes**

The Board had been given two sets of minutes for October 2010. The General Counsel explained the difference between the original draft minutes and the replacement minutes which include an entire written statement which had been read at the meeting. A MOTION WAS MADE AND SECONDED (Anastos/Steinbrueck) TO APPROVE THE OCTOBER 24-25, 2010 BOARD MEETING MINUTES AS REVISED. THE MOTION PASSED UNANIMOUSLY.

Rosemary Gammon arrived at 10:10 a.m.

**4. Legal counsel briefing regarding pending litigation**

**A.** TSPE v. TBAE and Cathy L. Hendricks in her official capacity as Executive Director.

B. Richardson, Rogers and Winton v. TBAE

The Board went into to closed session for a briefing on the pending litigation with Assistant Attorney General, Ted Ross at 9:25 a.m. and adjourned at 10:48 a.m.

The Board returned to open session and took a break from 10:56 a.m. until 11:06 a.m. when it reconvened.

5. Executive Director Report

- A. Budget  
Reserve Fund Balance Policy  
Budget Analysis through December 31, 2010

The Chair recognized the Executive Director to discuss the agency budget. The Executive Director introduced Penny Black, the agency's new Accounting Manager. The Executive Director pointed out to the Board the implementation of the Reserve Fund Balance policy adopted by the Board at the last meeting. The fund is to be kept at the Safekeeping Trust. The Executive Director made a proposal to revise the budget to restore funding for IT expenditures. **A MOTION WAS MADE (Anastos/Gammon) TO APPROVE THE REVISED BUDGET WITH THE \$91,000.00 EXCEPTIONAL ITEMS INCLUDED AND MOVE THE ENDING FUND BALANCE INTO THE SIX MONTH RESERVE FUND.** Further discussion ensued amongst Board members regarding the motion. **AN AMENDMENT WAS MADE (Anastos/Gammon) AND SECONDED TO ADJUST THE RESERVE IN THE BUDGET TO \$1.5. THE MOTION PASSED BY A VOTE OF 7-1 (WALKER OPPOSED).**

The Board recessed at noon for lunch. The Chair called the meeting to order at 1:05 p.m. Mr. Bearden did not return.

5. Executive Director Report

- B. Enforcement
- C. Registration

The Executive Director presented information regarding enforcement efforts and case load numbers. The Executive Director also reported upon the agency's communications strategy and outreach, noting a substantial increase from 2009 to 2010. She also reported upon a plan she has to hold a continuing education program in spring 2012 for 6 hours of continuing education credit. The Executive Director also reported upon the number of examination candidates, the number of registrants and the ratio of in-state to out-of-state registrants. In addition, the Board had a further discussion regarding registration trends across the years within the agency. The Chair opined that staff should prepare charts which display the percentages of active, inactive, and emeritus registrants.

6. **Report on Conferences and Meetings**

**A. NCARB MBE Conference, New Orleans, Louisiana (November 4-6, 2010)**

The Chair reported to the Board on the meeting and stated that he, the Executive Director and Chuck Anastos attended the meeting. It was reported that NCARB is in the process of a very thorough strategic planning process and are conducting a search for a new Executive Vice President. It was also reported that NCARB is making efforts to standardize the amount of continuing education required for architects and the process for reporting continuing education. The Chair reported legal counsel for NCARB as well as representatives from other jurisdictions did not express concern over NCARB's recent changes reducing the amount of scrutiny over the work of interns by supervising architects.

**B. NCIDQ Annual Council of Delegates Meeting & NCIDQ Virtual Annual Webinar (November 11-13, 2010)**

The Executive Director reported that she and staff members, Mary Helmcamp and Jackie Blackmore attended the webinar from the office. The Chair and Board member Chuck Anastos connected from their offices. The Executive Director reported that the webinar went well and was very cost-effective compared to holding a meeting. The Executive Director reported upon challenges NCIDQ is facing in implementing a continuing education log for interior designers, implementation of a broadly experienced interior designer program, the publication of a new book on interior design by two professors from the University of Minnesota, and fewer people are sitting for the NCIDQ examination. Mr. Anastos reported that it was an interesting format and he discerned an apparent disagreement between AIA and NCIDQ over interior design licensure.

**C. Design Futures Council – Leadership Summit on Design Innovation & Technology, La Jolla, CA (January 12-14, 2010)**

The Executive Director reported to the Board on the meeting and gave details regarding the expansion of technology, emphasis on customer service, innovative design, issues regarding future leadership in the architectural profession arising from architects leaving the profession, and Building Information Modeling (BIM).

**The Board recessed at 1:58 p.m. and reconvened at 2:16 p.m.**

7. **General Counsel Report**

**Proposed Rules for Adoption**

- A. Rules §1.21, §3.21, §5.31 to eliminate "grandfather" provisions in order to apply the same prerequisites for registration to each applicant regardless of when the applicant began his or her education or experience. A MOTION WAS MADE AND SECONDED (Anastos/Mijares) TO ADOPT PROPOSED AMENDMENTS TO RULES §1.21, §3.21, AND §5.31. THE MOTION PASSED UNANIMOUSLY.**

- B. Rules §5.31 and §5.202 to allow candidates the option of completing an interior design experience program administered by the National Council for Interior Design Qualification (NCIDQ) for registration in lieu of fulfilling the experience requirements currently in the rule. The rule maintains the current requirements and creates the option of completing the NCIDQ program. **A MOTION WAS MADE AND SECONDED (Pinson/Vassberg) TO ADOPT PROPOSED AMENDMENTS TO RULES §5.31 AND §5.202. THE MOTION PASSED UNANIMOUSLY.**
- C. Rules §1.5, §1.191, §1.192 to modify the architectural intern development program (IDP) to conform to national standards and to increase the number of hours necessary to successfully complete the program. The Board debated provisions relating to the modification of the level of oversight of interns under the NCARB changes. **A MOTION WAS MADE AND SECONDED (Mijares/Walker) TO ADOPT PROPOSED AMENDMENTS TO RULES §1.5, §1.191, AND §1.192 FOR ADOPTION. THE MOTION PASSED BY A VOTE OF 4-3 (Pinson, Anastos and Gammon voted against adoption. Bearden did not vote.)**
- D. Rule §7.5 to implement modifications to Robert's Rules of Order as used in Board meetings. **A MOTION WAS MADE AND SECONDED (Pinson/Steinbrueck) TO ADOPT PROPOSED AMENDMENTS TO RULE §7.5. THE MOTION PASSED UNANIMOUSLY.**

8. **Enforcement Cases**

**Review and possibly adopt ED's recommendation on the following enforcement cases:**

The Chair recognized TBAE Managing Litigator Michael Shirk to present the enforcement cases. Mr. Shirk directed the Board members to the enforcement cases which involved proposed Agreed Orders and/or Settlements with the Respondents.

**A. Non-Registrants:**

**Anyanwu, Don (#044-10E)** A MOTION WAS MADE AND SECONDED (Pinson/Anastos) TO APPROVE THE PROPOSAL FOR DECISION AND THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY IN THE AMOUNT OF \$20,000.00 ALONG WITH A CEASE AND DESIST ORDER. THE MOTION PASSED UNANIMOUSLY.

**Guerra, Hector and Guerra, Protasio (#245-08N; (#246-08N)** A MOTION WAS MADE AND SECONDED (Pinson/Anastos) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY IN THE AMOUNT OF \$6,000.00. THE MOTION PASSED UNANIMOUSLY.

**Farias, Jose (#045-10N)** A MOTION WAS MADE AND SECONDED (Walker/Steinbrueck) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY IN THE AMOUNT OF \$10,000.00. THE MOTION PASSED UNANIMOUSLY.

**B. Registrants:**

**Dillard, Robert G. (#010-10A)** A MOTION WAS MADE AND SECONDED (Pinson/Anastos) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY IN THE AMOUNT OF \$350.00. THE MOTION PASSED UNANIMOUSLY.

**Porter, Marley (#176-08A)** A MOTION WAS MADE AND SECONDED (Pinson/Anastos) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY IN THE AMOUNT OF \$4,500.00. THE MOTION PASSED UNANIMOUSLY.

**C. Continuing Education:**

**Michael Dean (#016-11A); and Williams Holmes (#043-11A)** A MOTION WAS MADE AND SECONDED (Mijares/Anastos) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY IN THE AMOUNT OF \$1,200.00 UPON EACH RESPONDENT. THE MOTION PASSED UNANIMOUSLY.

**Michael McIntyre (#154-10L)** A MOTION WAS MADE AND SECONDED (Pinson/Anastos) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY IN THE AMOUNT OF \$1,700.00. THE MOTION PASSED UNANIMOUSLY.

**Gordon Meehl (#042-11A)** A MOTION WAS MADE AND SECONDED (Mijares/Pinson) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY IN THE AMOUNT OF \$500.00. THE MOTION PASSED UNANIMOUSLY.

**The Board recessed at 3:40. The Chair called the meeting to order at 3:54 p.m.**

**9. Request from Texas Floodplain Management Association for ruling on architects' authority to issue a FEMA Elevation Certificate**

The Chair gave an explanation to the Board regarding the FEMA package. The Board was requested to issue a ruling on the legal authority of an architect to certify a portion of a FEMA floodplain elevation certificate. He stated that the party would like a response prior to April 2011.

A MOTION WAS MADE AND SECONDED (Anastos/Mijares) TO TABLE THIS ITEM. THE MOTION PASSED UNANIMOUSLY. Without objection, the Chair directed staff to seek input from the Texas Society of Architects regarding the custom of architects regarding design services in areas most likely to address this issue.

10. **TBAE and TBPE Mediation Services Update by the Center for Public Policy Dispute Resolution (CPPDR) at the University of Texas at Austin**

The Chair gave an update to the Board on the mediation between representatives of the two agencies and the professional societies for both professions. The meetings were held on October 12, 2010 and November 29, 2010. They finished the second day of mediation with a conception agreement regarding three major areas: (1) qualifications and an audit process to grandfather engineers who were engaged in building design prior to the effective date of the architectural practice act in 1990; (2) cross-licensure or path for a closed class of architects and engineers enrolled in an educational program on or before 2013 to meet requirements to sit for the exam and become licensed in the other profession; and (3) a matrix to streamline and unify thresholds in the architecture and engineering laws based upon building classifications in the International Building Code to establish thresholds for the engagement of an architect based upon occupancy. A draft matrix was presented at the last mediated meeting but it was agreed to establish a separate group to develop the occupancy threshold matrix. He explained that legislation to "fix" the statutes must be filed no later than March 11, 2011 which does not give the matrix working group much time to complete its charge. It was emphasized that the matrix is critical to architects and the bill would not move forward with the support of the architects without the matrix.

11. **Approval of Resolution Honoring:**

Lew Vassberg (May 2005 until January 2011)  
James S. Walker (May 2005 until January 2011)  
Rosemary Gammon (May 2005 until January 2011)

The Chair read the resolutions honoring the three Board members and the time they served on the Board. The Chair informed the outgoing members that he has enjoyed being their chair and it will be a challenge to fill their shoes.

12. **Chair's Closing Remarks**

The Chair reminded Board members to mindful of any changes to travel plans well in advance in order to avoid additional costs to the agency. The Chair thanked the audience for attending.

At the request of staff, the Chair asked the Board whether the Board's will is for minutes to be more detailed or more concise. The general consensus of the Board is that the minutes be concise.

11. **Adjournment**

**A MOTION WAS MADE AND SECONDED (Pinson/Gammon) TO ADJOURN THE MEETING AT 5:11 P.M. THE MOTION PASSED UNANIMOUSLY.**

Approved by the Board

  
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ALFRED VIDAURRI, JR., AIA, NCARB, AICP, LEED APBD+C  
Chair, TEXAS BOARD OF ARCHITECTURAL EXAMINER